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**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

**In re:**

**PG&E CORPORATION,**

**- and -**

**PACIFIC GAS AND ELECTRIC  
COMPANY,**

**Debtors.**

- ☐ Affects PG&E Corporation  
☐ Affects Pacific Gas and Electric Company  
☒ Affects both Debtors

*\* All papers shall be filed in the Lead Case, No.  
19-30088 (DM).*

Case No. 19-30088 (DM)

Chapter 11

(Lead Case) (Jointly Administered)

**DEBTORS' REPLY IN FURTHER  
SUPPORT OF DEBTORS' MOTION FOR  
ORDER APPROVING (A) PROCEDURES  
FOR FILING OMNIBUS OBJECTIONS  
TO CLAIMS AND (B) THE FORM AND  
MANNER OF THE NOTICE OF  
OMNIBUS OBJECTIONS**

**[Related to Dkt. No. 7758]**

Date: June 24, 2020

Time: 10:00 a.m. (Pacific Time)

Place: (Telephone/Video Appearances Only)  
United States Bankruptcy Court  
Courtroom 17, 16th Floor  
San Francisco, CA 94102

PG&E Corporation (“**PG&E Corp.**”) and Pacific Gas and Electric Company (the “**Utility**”), as debtors and debtors in possession (collectively, “**PG&E**” or the “**Debtors**”) in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”), hereby submit this Reply in Further Support of the Debtors’ Motion (the “**Motion**”) [Dkt. No. 7758]<sup>1</sup> pursuant to section 105(a) of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rule 3007 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), for entry of an order approving the Omnibus Claim Objection Procedures and Omnibus Claim Objection Notice (both as defined in the Motion).

### MEMORANDUM OF POINTS AND AUTHORITIES

Objections to the Motion were filed by the California Franchise Tax Board (the “**FTB Objection**”) [Dkt. No. 7975], a group of California state agencies (the “**CSA Objection**”) [Dkt. No. 7985], and the PERA lead plaintiffs (the “**PERA Objection**”) [Dkt. No. 7995].<sup>2</sup> These Objections collectively raise arguments on five topics. Debtors address and propose resolutions for each below, and attach as **Exhibit A** a *Modified [Proposed] Order Approving (A) Procedures for Filing Omnibus Objections to Claims and (B) the Form and Manner of the Notice of Omnibus Objections* (the “**Modified Proposed Order**”) reflecting the proposed resolutions, and as **Exhibit B** a redline comparison with the proposed order filed with the Motion

#### **I. EVIDENCE SUPPORTING DEBTOR OBJECTIONS**

The FTB and PERA argue that the Omnibus Claim Objection Procedures would improperly enable the Debtors to file an omnibus objection without supporting evidence. *See* FTB Obj. at 2; PERA Obj. at 3-4.

The Debtors acknowledge that Ninth Circuit precedent and the Bankruptcy Local Rules contemplate that claim objections must generally be supported by evidence to overcome the threshold presumption of validity of a proof of claim filed in proper form. The Debtors maintain

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<sup>1</sup> Any capitalized terms defined in the Motion and not otherwise defined in this Reply shall have the meaning defined in the Motion

<sup>2</sup> Joinders to one or more of the objections were filed by State Farm [Dkt. No. 7996], the City and County of San Francisco [Dkt. No. 7994], the South San Joaquin Irrigation District [Dkt. No. 7993], a group of California municipalities [Dkt. No. 7992], and the City of American Canyon [Dkt. No. 8003]. None of the joinders asserts additional grounds of objection.

1 that certain omnibus objections can be adequately supported on the face of the claim (*e.g.*,  
2 duplicates and amended claims). The Debtors are nevertheless willing to support all omnibus  
3 objections with one or more declarations

4 Accordingly, Debtors propose the following in the first sentence of paragraph 2.D of the  
5 **Modified Proposed Order** (deletions indicated by strikethroughs, additions in the text are  
6 underlined):

7 D. Supporting Documentation. ~~To the extent appropriate, the~~ The Omnibus Objections  
8 ~~may~~ shall be accompanied by an affidavit or declaration that states that the affiant  
9 or the declarant has reviewed the Proofs of Claim included therein and the applicable  
10 supporting information and documentation provided therewith, made reasonable  
efforts to research the Proof of Claim on the Debtors' books and records, and  
believes the documentation does not provide *prima facie* evidence of the validity  
and amount of the Proofs of Claim.

## 11 **II. SPECIFICITY OF DEBTOR OMNIBUS OBJECTIONS**

12 PERA objects that the Omnibus Claim Objection Procedures do not require sufficient  
13 specificity in Debtors' stated grounds for objection. *See* PERA Obj. at 3-4. PERA focuses on one  
14 specific proposed additional ground for objection: "claims seek recovery of amounts for which the  
15 Debtors are not liable" (item 3.c in the proposed additional grounds for objection in the Motion,  
16 and paragraph 2.C.iii in the Proposed Order).

17 In response, the Debtors propose to modify this stated ground for objection by including the  
18 following clause at the end of paragraph 2.C.iii of the Modified Proposed Order: "for the reason  
19 or reasons stated in the Objection"

## 20 **III. EVIDENCE SUPPORTING OPPOSITONS TO OBJECTIONS**

21 CSA, FTB, and PERA argue that the Omnibus Claim Objection Procedures would  
22 improperly require Claimants to provide a declaration under penalty of perjury of the relevant facts  
23 in support of the Claimant's response, and all documentation or evidence outside the proof of claim  
24 on which the Claimant will rely in opposing an Omnibus Objection. *See* CSA Obj. ¶¶ 1-2; FTB  
25 Obj. at 3-4; PERA Obj. at 4-5.

26 At least one objector concedes that the Local Rules require a declaration supporting the  
27 factual contentions in response to an Omnibus Objection. *See* CSA Obj. ¶ 2 ("Bankruptcy Local  
28 Rule 9013-1(d) requires a party to support factual contentions made in support of an opposition by

1 declarations or affidavits.”). Normally this requirement should not be unduly burdensome or unfair,  
2 because in the normal case a claimant will know or have access to the information on which the  
3 claim is based. In some limited circumstances—as may be confronted by a taxing agency such as  
4 the FTB—the claimant does not have access to the information supporting the claim, and the  
5 Debtors acknowledge that allowances should be made in those circumstances. The Debtors also  
6 appreciate that not all supporting evidence is of equal significance, and it is appropriate to strike a  
7 balance when the evidence is voluminous.

8 Accordingly, the Debtors propose the following modifications to the Omnibus Claim  
9 Objection Procedures stated in the Motion and Proposed Order:

- 10 1. Responses must be supported by a declaration or affidavit and by the documentary and  
11 other evidence on which the Claimant relies, to the extent not included in the Proof of  
12 Claim.
- 13 2. If the evidence is not within the possession of the Claimant, the Response should so  
14 state, with a brief explanation of the circumstances.
- 15 3. If documentary evidence is overly voluminous such that providing all of it would  
16 impose an undue burden, the Response should provide the primary documentary  
17 evidence (for example, the governing contract, statements of account, or key  
18 correspondence), with a description of other evidence that the Claimant has or of which  
19 the Claimant is aware.

20 The Debtors have proposed revised language embodying these modifications in  
21 paragraph 2.I.i.d) of the Modified Proposed Order (added language is underlined):

- 22 d) A copy of any other documentation or other evidence of the Proof of Claim, to the extent  
23 not already included with the Proof of Claim, upon which the Claimant will rely in  
24 opposing the Omnibus Objection at the hearing; provided, however, (1) if the  
25 documentary or other evidence is not within the possession of the Claimant, the  
26 Response shall provide a brief explanation of the circumstances, and (2) if the evidence  
27 is overly voluminous such that providing all of it would be unwieldy or impose an undue  
28 burden, the Response shall provide the primary evidence (for example, the governing  
contract, statement of account, or key correspondence) with a description of other  
supporting evidence that Claimant has or of which Claimant is aware;

1 **IV. SERVICE OF RESPONSES TO OBJECTIONS**

2 CSA, FTB, and PERA argue that the only requirement for serving a Response to an  
3 Omnibus Objection should be that the response is served by email or mail on counsel for the  
4 Debtors on or before the deadline to respond, not that counsel for the Debtors actually receives the  
5 response, as stated in the proposed procedures. *See* CSA Obj. ¶ 3; FTB Obj. at 4; PERA Obj. at  
6 5-6.

7 Timely notice of Responses to objections is a significant case management issue. The  
8 Debtors have a legitimate need to know at the response deadline which objections will be opposed,  
9 so they—and the Court—can manage the docket in an orderly fashion. Access to electronic mail  
10 and the internet is now virtually universal, and there is no reason in the vast majority of cases—  
11 including any involving any of the objectors or the parties who filed joinders—to delay notification  
12 to the Debtors of Responses until they are received via first class mail, perhaps five to seven days  
13 after the Response deadline. Such delay would prejudice the Debtors by unnecessarily compressing  
14 their time to reply to a mailed Response.

15 At the same time, the Debtors do not seek to impose unnecessary burdens on Claimants.  
16 For this reason, the Debtors acknowledge that, when a Response is electronically filed via the  
17 Court's ECF system, the Debtors will automatically receive service in that manner, and the Debtors  
18 agree that no additional service should be required.

19 In the case of Claimants who are not able to use the ECF system, service must be made by  
20 electronic mail to the email addresses of the Debtors' counsel as shown on the Omnibus Objection.  
21 In those rare circumstances in which a Claimant does not have the ability to serve a Response  
22 electronically, the Debtors propose that the Response be served by a postal or commercial express  
23 service that will effect delivery not more than two business days after the Response deadline, with  
24 the further requirement that the Claimant inform Debtors' counsel by email, telephone or facsimile  
25 before the Response deadline of the Claimant's name and phone number, the number of the  
26 Omnibus Objection, and the fact that a paper Response is being delivered by express. These  
27 proposed modifications are reflected in paragraph 2.I.iv of the Modified Proposed Order.  
28

1 **V. CSA ADDRESS CHANGE PROCEDURE**

2 CSA objects to the provision in the Motion and the Proposed Order that the “Notice  
3 Address” (the address of the designated representative of the Claimant for purposes of a reply to  
4 the Response) “will control and will become the service address for future service of papers with  
5 respect to all of the Claimant’s Proofs of Claim listed in the Omnibus Objection . . .” [CSA Obj.  
6 ¶ 4.]

7 In response to this objection, the Debtors have reevaluated the “Notice Address” provision  
8 in the Proposed Order [paragraph 2.I.i.f)] and have revised it to provide that a new “Notice Address”  
9 will become an *additional* address for service of notice relating to all of the Claimant’s Proofs of  
10 Claim that are the subject of the Omnibus Objection, and will not supersede any existing address(es)  
11 for service for those Proofs of Claim.

12 As revised, paragraph 2.I.i.f) states as follows (deleted language is indicated by  
13 strikethrough, and added language by underlining):

- 14 f) The Claimant’s name, address, telephone number, and/or the name, address, and  
15 telephone number of the Claimant’s attorney and/or designated representative to whom  
16 counsel for the Debtors should serve a reply to the Response, if any (each, a “**Notice  
Address**”). If a Response contains a Notice Address that is different from the name  
17 and/or address listed on the Proof of Claim, the new Notice Address will ~~control and~~  
18 ~~will become~~ be added to the existing service address(es), and for future service of papers  
19 with respect to all of the Claimant’s Proofs of Claim listed in the Omnibus Objection  
(including all Proofs of Claim to be disallowed and the surviving Proofs of Claim) and  
only for those Proofs of Claim in the Omnibus Objection will be sent to the new Notice  
Address in addition to other service address(es) already on file.

20 **VI. CONCLUSION**

21 For the foregoing reasons, the Court should grant the Debtors’ Motion with the  
22 modifications proposed in this Memorandum.

23  
24 Dated: June 22, 2020

**WEIL, GOTSHAL & MANGES LLP**  
**KELLER BENVENUTTI KIM LLP**

25  
26 /s/ Peter J. Benvenutti  
Peter J. Benvenutti

27 *Attorneys for Debtors and Debtors in Possession*  
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